

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

PATRICK HENRY MURPHY

Petitioner,

VS.

RICK THALER, Director  
Texas Department of Criminal Justice,  
Correctional Institutions Division

Respondent.

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NO. 3-09-CV-1368-L-BD

**ORDER**

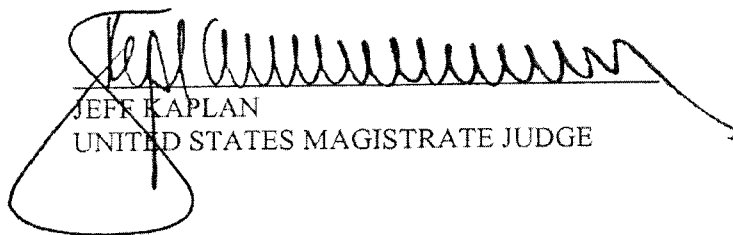
Petitioner Patrick Henry Murphy, a Texas death row inmate, has filed a motion to stay and abate this federal habeas proceeding so he can return to state court to exhaust two claims that were never raised on direct appeal or state collateral review: (1) he was sentenced to death without a necessary jury finding; and (2) trial counsel was ineffective for failing to seek a change of venue, for not conducting a proper mitigation investigation, for failing to investigate whether petitioner suffers from post-traumatic stress disorder, and for not objecting to impermissible voir dire and an improper jury argument by the prosecutor. Respondent counters that petitioner has failed to establish the requirements for a stay under *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005).

After considering the written submissions of the parties, the court declines to decide at this stage of the proceeding whether a *Rhines*-stay is appropriate. Instead, the court will consider the issue in connection with its review of petitioner's application for writ of habeas corpus, which will be decided in due course. Accordingly, petitioner's motion for a stay and abatement [Doc. #31] is

denied without prejudice. The court will determine whether this action should be stayed so petitioner can return to state court to exhaust his new claims when it reviews the case on the merits. No further briefing by the parties on the stay issue is required or desired.

SO ORDERED.

DATED: February 22, 2011.



JEFF KAPLAN  
UNITED STATES MAGISTRATE JUDGE